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Supreme Court

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JUN 17 1970

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IN THE

Supreme Court of the United States

October Term, 1969
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No. ~~2220 Misc.~~

5257

LOU BERTHA LABINE, Natural Tutrix of
the minor child, Rita Nell Vincent,

Appellant,

versus

Administrator of Succession of Ezra Vincent,

Respondent.

MOTION TO DISMISS APPEAL FROM
SUPREME COURT OF STATE OF LOUISIANA

BRIEF FOR THE RESPONDENT

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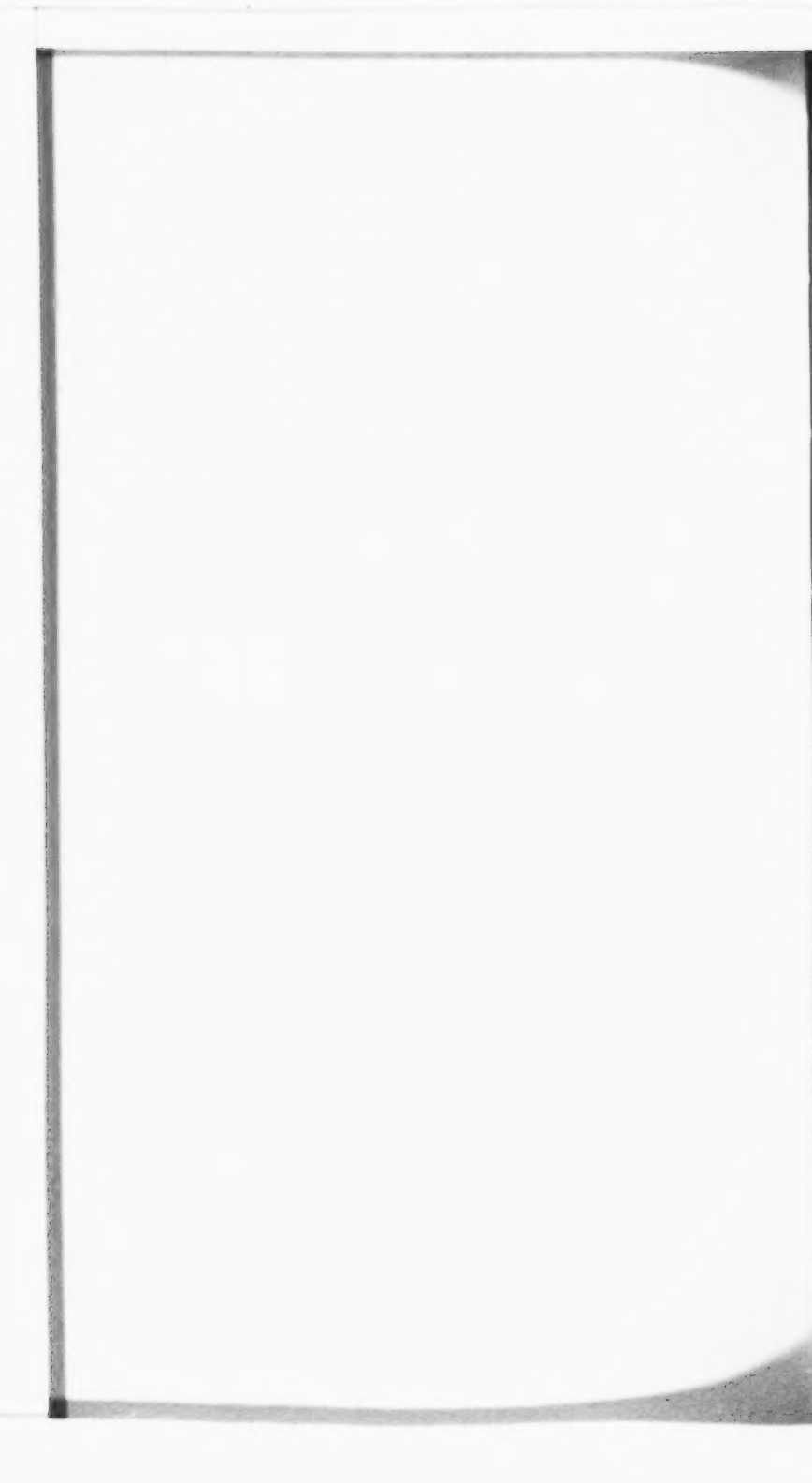
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1969

No. 2223 Misc.

LOU BERTHA LABINE, Natural Tutrix of the minor
child, Rita Nell Vincent,

Appellant,

versus

Administrator of Succession of Ezra Vincent,
Respondent.

On Appeal from the Supreme Court of the
State of Louisiana

BRIEF FOR RESPONDENT

MOTION TO DISMISS APPEAL

Respondent moves the Court to dismiss the appeal herein on the ground that no substantial Federal question is presented by the appeal.

OPINIONS BELOW

The opinion of the Court of Appeal, Third Circuit, State of Louisiana, is reported at 229 So. 2d 449 (1970), and the denial of the application to the Louisiana Supreme Court for a writ of certiorari is reported at 231 So. 2d 395 (1970).

JURISDICTION

The judgment of the Court of Appeal, Third Circuit, State of Louisiana, was entered on December 18, 1969, and a petition for rehearing was denied on January 7, 1970. The petition for a writ of certiorari was denied by the Supreme Court of the State of Louisiana on February 27, 1970. The jurisdiction of this Court rests on 28 USC 1257 (2).

STATEMENT

The decedent died intestate, and he was survived by no spouse, no ascendants nor legitimate descendants. An administration was opened by the decedant's collateral heirs, who inherited from him under Louisiana law to the exclusion of illegitimate children. A claim was made by an illegitimate child that she should inherit on the same basis as a legitimate child to the exclusion of the collateral heirs. In the alternative, she asked for alimony for her support, which was denied since she was receiving \$100.00 per month from the Veteran Administration and Social Security Administration pensions, and was not in need, which was a prerequisite under the State Statute.

The State trial Court held that under Louisiana law, an acknowledged illegitimate child could not inherit from her father to the exclusion of collateral heirs, which decision was affirmed by the Court of Appeal, Third Circuit, State of Louisiana, and a writ of certiorari was denied by the Louisiana Supreme Court.

Appellant contends that the Articles of the Louisiana Civil Code dealing with descent and distribution which permits inheritance rights to illegitimate children only in certain cases is in violation of the equal protection and due process clauses of the 14th Amendment to the United States Constitution.

QUESTIONS PRESENTED

- I. The regulation of descent and distribution of real and personal property is governed by State law and no Federal question is presented.
- II. The distinction between legitimate and illegitimate children in the Louisiana Succession Laws do not violate the due process and equal protection clauses of the 14th Amendment to the United States Constitution.
- III. The holdings of *Levy* and *Glon* should not apply to Louisiana Succession Laws.
- IV. Louisiana has a paramount interest in the stability of its land titles.
- V. No Federal question is presented upon a determination by State Court that a minor child receiving \$100.00 per month is not in need under State Statute.

ARGUMENT

I.

The regulation of descent and distribution of real and personal property is governed by State law and no Federal question is presented.

The estate of the decedent consisted of movable property and immovable property all located in Calcasieu Parish, Louisiana, where he had established his domicile for many years prior to his death. The power of regulating the descent and distribution of property, both real and personal, is derived from and regulated by the State in which the property is located. *Fredrickson vs. Louisiana*, 23 How 445, 16 L. Ed. 577 (1860); *United States vs. Fox*, 94 U.S. 315, 24 L. Ed. 192 (1876); *United States vs. Burnison*, 339 U.S. 87; 94 L. Ed. 675 (1950). The States were given this right under the 10th Amendment to the Constitution of the United States. The title and modes of disposition of real property within the State, whether intervivos or testamentary, are not matters placed under the control of Federal authority. *United States vs. Fox*, supra, *Harris vs. Zion Savings Bank & Trust Co.*, 317 U.S. 447, 63 S. Ct. 354, 87 L. Ed. 290 (1943). The right to inherit property is a statutory right governed by the laws where the property is situated. 26 A CJS Descent and Distribution, Paragraph 6, Page 526.

The Louisiana law provides that illegitimate acknowledged children may inherit from their natural father as follows:

Article 919, La. Revised Civil Code. Natural children are called to the inheritance of their natural father who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined as is directed in the title: *Of Father and Child.*

Article 202, La. Revised Civil Code. Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, or contra-distinguished by the appellation of bastards.

Article 206, Louisiana Civil Code. Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*

Since the decedent was survived by collateral relations, under the Louisiana Statutes of Descent and Distribution, the collateral relations inherit from him to

the exclusion of Appellant, who was a natural child. *Louisiana Civil Code Article 919, supra.*

II.

The distinction between legitimate and illegitimate children in the Louisiana Succession Laws do not violate the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

The fact that the Succession laws of the State of Louisiana make a distinction between the rights of inheritance of legitimate and illegitimate children does not violate the due process equal protection clauses of the 14th Amendment to the United States Constitution. The equal protection clause of the 14th Amendment permits the State to classify, the only requirement being that the classification is based upon some reasonable basis. To hold that the inheritance Statutes of the State of Louisiana are unconstitutional, the Court must find invidious, purposeful and arbitrary discrimination, wholly lacking in rationality.¹ *Morey vs. Doud* 354 U.S.

¹As stated in *Morey vs. Doud, supra*, the rules for testing a discrimination have been summarized as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

457, 463, 464, 1 L. Ed. 2d 1485, 77 Sup. Ct. 1344, 1349. (1957); *United States vs. Burnison*, *supra*.

The distinction between legitimate and illegitimate children in the succession laws of the State of Louisiana do not violate the constitutional guarantees for the State of Louisiana has a paramount interest in encouraging and upholding the institution of marriage and discouraging the birth of illegitimate children. The preference given by Louisiana Statute to legitimate relations to inherit to the exclusion of illegitimate relations clearly is related to the legislative purpose.

The fact that Louisiana uses its succession laws to encourage and discourage illegitimacy, which is a valid social aim of the State, and is related to the right of a State to enact legislation to protect the health, morals and general welfare of its citizens, and this is clearly within its constitutional province. *Strahan vs. Strahan*, 304 F. Supp. 40. (WD La, 1969)

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. "*Lindsley vs. Natural Carbonic Gas Co.* 220 US 61, 78, 79, 55 L ed 369, 377, 31 S Ct 337, Ann Cas 1912C 160."

III.

The holdings in *Levy* and *Glona* should not apply to the Louisiana Succession Laws.

The decisions in *Levy* and *Glona*² stand for the proposition that the denial of wrongful death benefits merely because of illegitimacy violates the due process and equal protection clauses of the United States Constitution because it constitutes an invidious discrimination. The Louisiana wrongful death Statute was invalidated to the extent that it denied illegitimate children or their parents the right to recover on the same basis as the enactment permits where the birth is legitimate. The holdings of *Levy* and *Glona* decide no more than wrongful death enactment create an unreasonable exemption from tort liability by allowing illegitimacy to bar recovery of tort damages otherwise due. The decisions found only that there was no rational basis for assuming that marriage would be discouraged and illegitimacy encouraged by denying recovery for subsequent wrongful death. *Strahan vs. Strahan*, *supra*.

The State has the right to make classifications in its legislation, and the regulation of descent and distribution are powers reserved to the State, and the inheritance laws of the State of Louisiana are constitutional because they are within the broad powers of classification permitted by State Legislatures, and there is a

²*Levy vs. State of Louisiana*, 391 U.S. 68, 88 S Ct 1509 20 L ed 2d 436 (1968); *Glona vs. American Guarantee & Liability Insurance Company*, 391 US 73, 88 S Ct 1515, 20 L ed 2d 441 (1968).

reasonable basis for the denial of inheritance to illegitimates equal to that of legitimate children.

IV.

Louisiana has a paramount interest in the stability of its land titles.

The transmission of a decedent's property is based upon ancient legal principles and for centuries have been the basis for the establishment of clear definitive disposition of estates. 33 *Tulane Law Rev.* 43 (1958), and authorities cited therein; *Strahan vs. Strahan*, supra. To hold that many years after a person's death, an illegitimate child who may have been unknown at the time, could many years later assert an interest in adjudicated property would devastate the orderly transmission of estates. In *Strahan vs. Strahan*, supra, the Court quoted with approval as follows:

"It (the State) has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. * * * The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national con-

cern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless it conflicts with some special inhibitions of the Constitution, or against natural justice.'

"* * * Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes. This principle received recognition and was applied in *Hamilton vs. Brown*, 161 US 256, 16 S Ct 585, 40 L Ed 691, where it was held to be competent for a State to make provision for promptly ascertaining, by appropriate judicial proceedings, who has succeeded to property upon the death of a person leaving such property within the State. * * *.

* * * *

"* * * The power of the State as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown * * *"

American Land Company vs. Zeiss, 219 US 47, 60; 31 S Ct 200, 204, 55 L ed 2d 82 (1910)

The title and modes of disposition of real property are governed by State law, and this is as it should be since concepts of real estate and land titles are deeply

rooted in the traditions, customs, habits and laws of the State. *United States vs. Fox*, supra, *United States vs. Burnison*, supra; *Richardson vs. McDonald*, 139 La 651, 71 So 934 (1916); *Reconstruction Finance Corporation vs. Beaver County*, 328 US 204, 66 S Ct 992; 90 L ed 1172 (1946).

V.

No Federal question is presented upon a determination by State Court that a minor child receiving \$100.00 per month is not in need under State Statute.

The laws of Louisiana provide that an illegitimate child is entitled to alimony from her father's estate.⁴ The child made an alternative claim for support, but in view of the fact that the Court found that she was receiving the sum of \$100.00 per month in Social Security and Veteran's Administration benefits, the Court found that she was not in need of such support which is a prerequisite statutory requirement.

CONCLUSION

The appeal from the Louisiana Supreme Court should be dismissed for the reason that there is no substantial Federal question presented, and for the other reasons set forth herein.

⁴Article 242, Louisiana Civil Code. But in order that they (illegitimate children) may have a right to sue for this alimony, they must:

1. * * * 2. They must prove in a satisfactory manner that they stand absolutely in need of such alimony for their support.

Respectfully submitted,

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CERTIFICATE

I, Norman F. Anderson, member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Motion to Dismiss Appeal has been deposited this day in the United States mail, postage prepaid, addressed to Lou Bertha LaBine, Natural Tutrix of the minor child, Rita Nell Vincent, c/o Cox & Cox, Attorneys at Law, 702 Kirby Street, Lake Charles, Louisiana 70601.

Lake Charles, Louisiana, June _____, 1970.

NORMAN F. ANDERSON